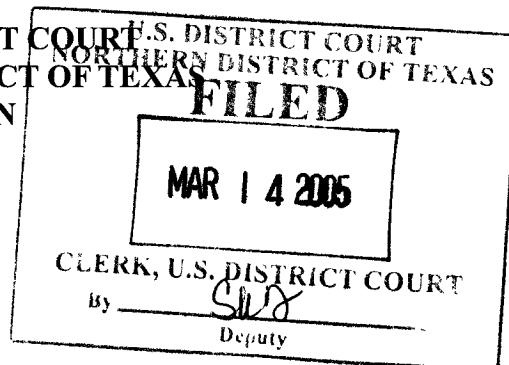


ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



W
JAMES PAPA

§

Plaintiff,

§

v.

§

ROBERT FEINSTEIN d/b/a
RF VIDEO

§

Defendant

§

CIVIL ACTION NO. 304CV-299-N

**PLAINTIFF JAMES PAPA'S APPENDIX IN SUPPORT
OF SECOND MOTION SUMMARY JUDGMENT**

1. Plaintiff's Original Complaint and Request for Preliminary Injunction..... 1
2. Defendant's Admissions and Denials..... 2
3. Affidavit of Chris McHam..... 3

Respectfully submitted,



GREY PIERSON
State Bar No. 16002500
CHRIS McHAM
State Bar No. 24041447
PIERSON BEHR, ATTORNEYS
301 West Abram Street
Arlington, Texas 76010
Voice: (817) 265-7771
Fax: (817) 861-9008
Attorneys for Plaintiff

March __, 2005

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served on all counsel of record and all *pro se* litigants by transmitting a true copy of same to such persons via certified U.S. Mail, return receipt requested, to Charles Adlai Rich, RICH AND LOW L.L.C. 4144 North Central Expressway, #515, Dallas, Texas 75204 on this date, March ___, 2005.



CHRIS McHAM

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CLERK'S OFFICE
FILED

Feb 14 2005

JAMES PAPA

§

CLERK, U.S. DISTRICT COURT

Plaintiff,

§

v.

§

CIVIL ACTION NO. _____

ROBERT FEINSTEIN d/b/a
RF VIDEO

§

Defendant

§

§

§

§

§

§

COMPLAINT AND REQUEST FOR PRELIMINARY INJUNCTION

Plaintiff JAMES PAPA files this Complaint against Defendant ROBERT FEINSTEIN d/b/a RF VIDEO.

1. PARTIES

1A. Plaintiff JAMES PAPA is an individual who resides in Irving, Dallas County Texas.

1B. Defendant ROBERT FEINSTEIN d/b/a RF VIDEO is a citizen of the State of Pennsylvania and may be served at 865 Green Ridge Circle, Langhorne, Pennsylvania 19053.

2. JURISDICTION

2A. This Court has jurisdiction under 28 U.S.C. §§1331, 1338(a), and 1338(b) as this case raises a Federal question in that this is an action for copyright infringement under the Copyright Act of 1976, Title 17 U.S.C., §§ 101 et seq. and the Lanham Act, 15 U.S.C. §1125(a), as hereinafter more fully appears.

2B. Plaintiff JAMES PAPA is a citizen of the State of Texas, and Defendant ROBERT FEINSTEIN d/b/a RF VIDEO is a citizen of the State of Pennsylvania. The matter in controversy exceeds, exclusive of interest and costs, the sum of seventy-five thousand dollars (\$75,000.00).

3. VENUE

3A. The claims asserted herein arose in this judicial district and Defendant does business in this judicial district. Venue in this judicial district is proper under 28 U.S.C §§ 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

4. FACTS

4A. Plaintiff JAMES PAPA has been engaged in the business of marketing and promoting professional wrestling. In the course of his business Plaintiff has created several trademarks as well as written numerous original musical works subject to common law copyright. Over the past twenty years, Plaintiff has created substantial goodwill and public trust in his marks and musical works.

4B. Plaintiff began using the trademark "Freebirds" in association with professional wrestling in 1984.

4C. Plaintiff began using the trademark "Bad Street USA" in association with professional wrestling in 1983.

4D. Plaintiff has written the lyrics, composed the music and produced the recording of numerous musical works. These works were used as "introduction" or "entry" music by numerous professional wrestlers. Such works were subject to common law copyright and include:

(1) *Don't Step to Ron*;

- (2) *Man Called Sting*;
- (3) *Mr Bung Bang*;
- (4) *Master of the DDT*;
- (5) *Freebird Forever*;
- (6) *Simply Ravishing*;
- (7) *Johnny B Badd*;
- (8) *The Natural*;
- (9) *The Dragon*;
- (10) *He's Smokin'*;
- (11) *Steinerized*.

+E. Plaintiff has written the lyrics, composed the music and produced the recording of numerous musical works. These works were used as "introduction" or "entry" music by numerous professional wrestlers. Many of these works were registered with Broadcast Music Incorporated, from whom Plaintiff receives royalties and include:

- (1) *Everything is Alright*;
- (2) *When the Love Comes Down*;
- (3) *The Night You Can't Remember*;
- (4) *Ain't Superstitious*;
- (5) *Touch My Level*;
- (6) *Boys are Back in Town*;
- (7) *Blue Jean Queen*;
- (8) *Heartbeat Away*; and
- (9) *Budstreet U.S.A.*

+F. In addition to writing the lyrics, composing the music and producing the recording for *Budstreet U.S.A.* the Plaintiff produced, in 1983 an original music video based on the song.

+G. Defendant ROBERT FEINSTEIN d/b/a RF VIDEO is the owner of an internet web site, www.RFVideo.com, that specializes in selling various materials centered around professional wrestling. Among the products offered on Defendant's website are a large number of videos in which professional wrestling bouts are shown. These matches begin with each wrestler entering the ring to his "introduction" music.

Many of Plaintiff's original musical creations were licensed to these wrestlers for their live performances as well as the televised versions. Examples of Defendant's websites featuring copyrighted materials belonging to Plaintiff are attached as "EXHIBIT A". No license was ever granted to Defendant to reproduce these recordings for sale or otherwise.

4H. In addition to the unlicensed reproduction of Plaintiff's common law and registered copyrighted musical material. Defendant's website offers for sale numerous videos in which a major selling point is the inclusion of bouts by professional wrestlers known as the "Freebirds". These wrestlers were managed by Plaintiff and the name "Freebirds" was created by Plaintiff and first used by Plaintiff in his promotional efforts in 1984.

4I. Defendants also offer for sale numerous products using the Plaintiff's trademark "Bad Street USA".

4J. Defendant is not privileged to reproduce any of the copyrighted materials belonging to Plaintiff. Nor is he privileged to use any trademark belonging to Plaintiff. Defendant has not sought license or permission to offer any of the above listed copyrighted or trademarked materials for sale.

4K. The infringement of Plaintiff's trademarks and copyrighted materials is causing Plaintiff irreparable harm.

4L. Plaintiff has performed all conditions precedent required for recovery in the instant action.

5. CAUSE OF ACTION 1: COPYRIGHT INFRINGEMENT

5A. Plaintiff repeats and reiterates each and every allegation of paragraphs of the Complaint marked "1" through "4", as if more fully set forth at length herein.

5B Upon information and belief the Defendant had access to Plaintiff's work via licensed television broadcast.

5C. The music, lyrics and video contained in the video recordings offered for sale by Defendant copy the original expression of the above listed music, lyrics and video written, performed or produced by Plaintiff and therefore infringe Plaintiff's copyright in said music, lyrics and video.

5D. Defendant has infringed on Plaintiff's copyright by copying Plaintiff's music, lyrics and video and producing and distributing videotapes containing Plaintiff's music, lyrics and video without Plaintiff's permission.

5E. By reason of Defendant's acts of copyright infringement, Plaintiff is entitled to recover all profits received or otherwise achieved, directly or indirectly, by Defendant in connection with his manufacturing, importing, advertising and sales of the accused products which are copies of Plaintiff's works.

6. CAUSE OF ACTION 2: CONTRIBUTORY COPYRIGHT INFRINGEMENT

6A. Plaintiff repeats and reiterates each and every allegation of paragraphs of the Complaint marked "1" through "5", as if more fully set forth at length herein.

6B. Upon information and belief, Defendant used and copied Plaintiff's music without Plaintiff's permission.

6C. Upon information and belief, Defendant used and copied Plaintiff's lyrics without Plaintiff's permission.

6D. Upon information and belief, Defendant used and copied Plaintiff's video without Plaintiff's permission.

6E. Upon information and belief, Defendant's use of the music, lyrics and video and copying of Plaintiff's music, lyrics and video was done so that Defendant would be able to take over, for his own profit and advantage, Plaintiff's music, lyrics and video.

6F. Upon information and belief, Defendant induced, participated, and aided and abetted in, and profited from, the copying of Plaintiff's music, lyrics and video.

6G. By reason of the foregoing copying, Defendant copied or aided and assisted in the copying and performing of Plaintiff's music, lyrics and video in various media without permission of Plaintiff, which is an infringement of Plaintiff's copyright.

6H. By reason of Defendant's acts of copyright infringement, Plaintiff is entitled to recover all profits received or otherwise achieved, directly or indirectly, by Defendant in connection with his manufacturing, importing, advertising and sales of the accused products which are copies of Plaintiff's works.

7. CAUSE OF ACTION 3: LANHAM ACT VIOLATIONS

7A. Plaintiff repeats and reiterates each and every allegation of paragraphs of the Complaint marked "1" through "6", as if more fully set forth at length herein.

7B. By reason of the foregoing, Defendant failed to designate Plaintiff as the author of Plaintiff's music, lyrics and video in advertising and publicizing.

7C. Upon information and belief Defendant's actions promoting video recordings containing music, lyrics and video created by Plaintiff without crediting Plaintiff as the author of the music, lyrics and video constitutes unfair competition under the legal doctrine of passing off.

7D. By reason of the foregoing, Defendant has willfully and intentionally caused damage to Plaintiff by affixing and using in commerce such false descriptions or

representations in violation of Plaintiff's rights under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

7E. By reason of Defendant's acts of copyright infringement, Plaintiff is entitled to recover all profits received or otherwise achieved, directly or indirectly, by Defendant in connection with his manufacturing, importing, advertising and sales of the accused products which are copies of Plaintiff's works.

8. REQUEST FOR PRELIMINARY INJUNCTION

8A. Defendant's conduct has caused and is causing Plaintiff incalculable harm. Plaintiff seeks a preliminary and permanent injunction to halt Defendant's use of Plaintiff's trademark and copyrighted materials.

9. REQUEST FOR RELIEF

9A. With respect to Plaintiff's Request for Preliminary Injunction Plaintiff asks the Court:

- (1) For an order preliminarily and permanently enjoining the Defendant, and his agents, servants, attorneys, and employees and all other persons acting in concert with him from committing any further acts of infringement, including but not limited to, copying, manufacturing, importing, advertising, selling and distributing the accused products, or aiding or abetting or assisting others in such infringing activities;
- (2) For an order directing Defendant to file with this Court and to serve on Plaintiff within thirty (30) days after service on Defendant of the injunction granted herein, or such extended period as the Court may direct, a report in writing, under oath, setting forth in detail the manner and form in which Defendant has complied with the injunction and order of the Court;
- (3) For an order seizing and impounding all Accused Products;
- (4) For an order requiring Defendant to account to Plaintiff for all profits derived by Defendant from the manufacture, importation, advertisement and sale of Accused Products.

- (5) For a judgment of damages against Defendant in an amount to be proven at trial or in the alternative a reasonable royalty, and for prejudgment and post-judgment interest until the award is fully paid;
- (6) For a judgment that Defendant has willfully and deliberately infringed Plaintiff's rights, and that this is an exceptional case entitling Plaintiff to enhanced damages; and
- (7) Attorney fees as available under the Copyright Act, 17 U.S.C. §§ 101 et seq.

9B. With respect to Plaintiff's requests for relief Plaintiff asks the Court:

- (1) For an order awarding actual damages;
- (2) For an order awarding exemplary and punitive damages;
- (3) That Plaintiff be granted costs, disbursements, and reasonable attorney fees;
- (4) That Defendant account to Plaintiff for his profits and any damages sustained by plaintiff arising from the foregoing acts of infringement and false representation;
- (5) That in accordance with such accounting, Plaintiff be awarded judgment for three times such profits and damages pursuant to 15 U.S.C. §1117;
- (6) For such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues raised by the Complaint.

Respectfully submitted,



GREY PIERSON
State Bar No. 16002500
CHRIS MCHAM
State Bar No. 24041447
Pierson Behr, Attorneys
301 Abram Street
Arlington, Texas 76010
Voice: (817) 265-7771
Fax: (817) 861-9008
Attorneys for Plaintiff

Dated February 6, 2004

Exhibit A

(Defendant's websites)

[BACKSTAGE AREA](#)[Product Select](#)[Sale](#)

NEW! Sign up onto our email list and receive the latest information. [Join Now!](#)

[New Releases](#)**Best of Kevin Sullivan (early years)**

[33 ECW
Commercial
Videos](#)

Item Id: 1013**Price : \$12.00**[Best Of...!](#)

[Classic
Collection](#)

1. Sullivan interview. Freebirds come out and argue, this was a great angle

2. Sullivan & Mike Davis vs. Freebirds (Austin Idol shows up late)

3. Great interviews and angles with Idol, Sullivan & Freebirds

4. Sullivan vs. Steve Keim (Sullivan turns heel)

5. Sullivan vs. Terry Taylor

6. Sullivan vs. Tony Atlas

7. Tons of Sullivan clips of all his major feuds in Florida, this is a must see if you never have seen him at his best, tons of gimmick matches are on this, it is a classic tape.

[Cult Classic
Movies](#)

Quantity : [Add to Cart](#)[DVD's](#)[View Cart](#) | [Continue Shopping](#) | [Empty Cart](#)[ECW](#)[ECWA](#)[Extreme Music](#)

[Gift
Certificates](#)

[Goldmine](#)[IWA Mid-South](#)[IWC](#)[Japan](#)

[Japanese
Merchandise](#)

Ring of Shirts

Merchandise

Ring of Shirts

*Phoenix
Championship
Wrestling*

PWF

*Ring of Honor
Merchandise*

*Ring of Honor
Tickets*

*Shoot
Interviews*

USA PRO/ICW

*Various
Promotions*

*Wrestling
Vixxens*



Online Catalog

Home Specials What's Hot Online Catalog How to Order

WRESTLING VIDEOS, DVD'S, BOOKS, CLOTHING, ACCESSORIES AND MORE

Cart Check Out Terms Safe & Secure Shopping

BACKSTAGE AREA

Product Search

SEARCH

WRESTLING
VIDEOS

NEW! Sign up onto our email list and receive the latest information. [Join Now!](#)

New Releases

aid florida

33 ECW
Commercial
Videos

Item Id: 103

Price : \$12.00

Best Of...!

Classic
Collection

1. Interview with the Freebirds (Mid Atlantic)
2. Dusty vs. One Man Gang
3. Interview with Gang/Dusty/Kevin, Oliver & Graham
4. Sullivan in Lakeland ring, interview with Sullivan, Oliver & Graham
5. Dory, Billy & Jack & Dusty interview
6. Dory vs. Mike Rotunda
7. Mulligan & OMG/Bass, Humperdink & Graham/Dusty interviews
8. Dusty vs. Flair (for a ring)
9. The Dream vs. Dennis Brown (The Dream is funny, his gimmick is an impersonation of Dusty)
10. Chavo & Hector vs. Scott McGee & Mike Graham
11. Hump & Saint/Flair interviews
12. Flair vs. McGee

Clearance
Merchandise

Cult Classic
Movies

CZW

DVD's

ECW

ECWA

Extreme Music

Gift
Certificates

Goldmine

13. Billy Jack/D. Funk/BJ Mulligan interviews
14. OMG & Pez Whatley vs. Black Bart & Ron Bass
15. Hump, Graham, Sullivan & Bass interview
16. Bass vs. McGee
17. OMG & Mulligan/Sullivan & Hump interviews
18. Bobby Eaton & Dennis Condry vs. Stagger Lee & Bill Watts (3 different matches)
19. Mr. Wrestling II & Magnum T.A. vs. Eaton & Condry
20. Gordy vs. Kamala
21. Flair vs. Hayes
22. Blackwell & Patera vs. Lawler & BJ Mulligan
23. Highlights of Cornette - Watts feud.

Quantity :

[View Cart](#)

IWA Mid-Scuth

IWC

[View Cart](#) | [Continue Shopping](#) | [Empty Cart](#)

Japan

Japanese
Merchandise

Case 3:04-cv-00299-N Document 21 Filed 03/14/05 Page 15 of 25 PageID 196

United States

Merchandise

Misc T-Shirts

Phoenix
Championship
Wrestling

PWF

Ring of Honor
Merchandise

Ring of Honor
Tickets

Shoot
Interviews

USA PRC/ICW

Various
Promotions

Wrestling
Vixxens



NEW! Sign up onto our email list and receive the latest information. Join Now!

New Releases

33 ECW
Commercial
Videos

best of all promotion's

Item Id: 110

Price : \$12.00

Best Of...!

Classic
Collection

1. Jake Roberts and Dick Slater confrontation, Jake DDT's Dark Journey and the crown hoes wild (NWA Mid-South 1986)

2. Jim Duggan interview, Jim shows his 2X4 collection (10/85 NWA Mid-south)

3. Buzz Sawyer, Masked Superstar & Dick Murdoch vs. Ted DiBiase, Steve Williams & Jim Duggan, the real Masked Superstar intereurs (1986 Mid-south)

4. Tom McGee's incredible ring entrance (1986 Japan)

5. NWA Champ Ric Flair vs. Lex Luger, 2 out of 3 falls, Luger pins Flair in the first fall and then gets destroyed by every heel in the building

6. Kareem Mohammed & Bruiser Brody vs. Jerry & Bill Dundee (1985 NWA Memphis)

CZW

7. Jesse Ventura vs. Jimmy Valiant, Cadillac match (1983 NWA Toronto)

8. AWA Tag Champs Greg Gagne & Jim Brunzell vs. Jerry Blackwell & Sheik Adnan El-Caissey (1981 AWA Winnipeg)

9. Gagne vs. Blackwell (1981 AWA Winnipeg)

10. Sgt. Tomko and Dean Ho confrontation Dean Ho interview (1981 Vancouver)

11. Dean Ho & Igor Volkoff vs. Bruiser Costas & Terry Costas & Adonis interview (1981 Vancouver)

ECWA

12. Ho & Volkoff, Moose Morowski vs. Adonis, Sgt. Tomko & Costas, steel cage, Costas and Tomko turn on Adonis (1981 Vancouver)

13. Jack Brisco and Roddy Piper confrontation, Piper & Ivan Koloff kick the hell out of Brisco and Tim Horner (1981 NWA Mid-Atlantic)

14. Costas vs. Adonis (1981 Van.)

15. Costas vs. Adonis, Hair vs. Hair (1981 Van.)

16. Entertainment Tonight: Feature on Georgia Championship Wrestling (1982 CBS)

Extreme Music

17. Jerry Lawler vs. Hulk Hogan, Lawler enters the arena on a horse (1979 NWA Memphis)

18. Killer Kowalski on The Tomorrow Show with Tom Snyder (198 NBC)

19. Skandar Akbar introduces Mr X who is Killer Kahn, Michael Hayes protests and gets whupped by Devestation Inc. Hayes & Gordy vow revenge Link & Kahn vs. Kerry & Kevin. Hayes & Gordy jump Link & Kahn during match, setting up a three way confrontation (7/84 NWA World Class)

20. Freebirds vs. Von Erichs, Bad Street Tornado match, wild and bloody with tons of action (7/84 World Class).

Gift
Certificates

Quantity

NWA Mid-South

IWC

Japan

Japanese
Merchandise

Case 3:04-cv-00299-N Document 21 Filed 03/14/05 Page 17 of 25 PageID 198

[View Cart](#) | [Continue Shopping](#) | [Empty Cart](#)

[Wrestling](#) | [Sports](#)

[Merchandise](#)

[Misc. T-Shirts](#)

[Phoenix
Championship
Wrestling](#)

[PWFW](#)

[Ring of Honor
Merchandise](#)

[Ring of Honor
Tickets](#)

[Shoot
Interviews](#)

[USA PRC/ICW](#)

[Various
Promotions](#)

[Wrestling
Vixxxens](#)



NEW! Sign up onto our email list and receive the latest information. [Join Now!](#)

New Releases

AWA--World Class--NWA 89

**39 ECW
Commercial
Videos**

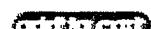
Item Id: 138

Price : \$12.00

Best Of...!

- Classic Collection**
 1. Ken Patera & Brad Rheingans vs. Bad Co. (title change)
 2. Olympions/Bad Co. interviews
 3. Missing link video
 4. Lance Von Erich vs. Gino Hernandez (Gino is wearing a mask)
 5. Lance vs. Killer Brooks (Lances debut match)
 6. OMG vs. Kamala (5th Annual Thanksgiving Day)
 7. Jack Victory vs. Brian Adidas
 8. Casey & Sunshine vs. Tatum & Missy (cage, Texas Death, Kabuki comes in)
 9. Dynamic Duo vs. Derry & Kevin (Gordy is ref in cage)
 10. Rick Rude vs. Iceman King Parsons
 11. Clip of the Oldies Dinner
 12. Midnight Express vs. Samoan Swat Team
 13. Great Muta vs. Steve Casey
 14. Butch Reed vs. Junk Yard Dog
 15. Bob Orton vs. Dick Murdoch
 16. Mike Rotunda & Steve Williams vs. Road Warriors (title change)
 17. Iron Sheik vs. Ranger Ross
 18. Ric Flair interview
 19. Dan Spivey & Sullivan vs. Steiner & Gilbert
 20. Flair vs. Steamboat (2 out of 3 falls)
 21. Freebirds vs. Lance, Kevin & Kerry Von Erich
 22. Steve Simpson vs. Rick Rude
 23. Bruiser Brody & Terry Gordy brawl all over the arena
 24. John Tatum & Grappler vs. Fantastics
 25. 1 hour special of NWA Worldwide
 26. Clips of Hayes vs. Luger, Warriors vs. Varsity Club, Sting vs. Rotunda & Rip Morgan, Bob Orton incidents with Murdoch, Flair vs. Steamboat .

Quantity:



IWA Mid-South

IWFC

Japan

**Japanese
Merchandise**

[View Cart](#) | [Continue Shopping](#) | [Empty Cart](#)

Case 3:04-cv-00299-N Document 21 Filed 03/14/05 Page 19 of 25 PageID 200

United States

Merchandise

Misc. T-Shirts

*Phoenix
Championship
Wrestling*

PWF

*Ring of Honor
Merchandise*

*Ring of Honor
Tickets*

*Shoot
Interviews*

USA PRO/CW

*Varicus
Promotions*

*Wrestling
Vixxens*



Case 3:04-cv-00299-N Document 21 Filed 03/14/05 Page 21 of 25 PageID 202

Charles Adlai Rich
 Attorney at Law
 Rich and Low, L.L.C.
 4144 N Central Expressway #515
 Dallas, TX 75204
 Ph: 214-651-8333
 Fx: 214-651-8305
 State Bar No. 24029795
 Attorney for RF Video

U.S. DISTRICT COURT
 NORTHERN DISTRICT OF TEXAS
FILED

APR 16 2004

CLERK, U.S. DISTRICT COURT
 By _____ Deputy

UNITED STATES DISTRICT COURT

Northern District of Texas, Dallas Division

JAMES PAPA

§ Docket No. 304CV-299-N

vs.

§ ANSWER OF RF VIDEO

ROBERT FEINSTEIN D/B/A RF VIDEO

ADMISSIONS AND DENIALS

1. Defendant is without sufficient information to admit or deny paragraphs 1A and 4A.
2. Defendant denies each and every allegation in paragraphs 1B, 2A, 2B, 3A, 4B, 4C, 4D, 4E, 4F, 4G, 5B, 5C, 5D, 5E, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 7A, 7B, 7C, 7D, 7E, 8A, 9A(1), 9A(2), 9A(3), 9A(4), 9A(5), 9A(6), 9A(7), 9B(1), 9B(2), 9B(3), 9B(4), 9B(5), 9B(6).

AFFIRMATIVE DEFENSES

1. As a first affirmative defense, defendant alleges accord and satisfaction.
2. As a second affirmative defense, defendant alleges assumption of risk.
3. As a third affirmative defense, defendant alleges contributory negligence.
4. As a fourth affirmative defense, defendant alleges fraud.
5. As a fifth affirmative defense, defendant alleges illegality.
6. As a sixth affirmative defense, defendant alleges laches.
7. As a seventh affirmative defense, defendant alleges payment.
8. As an eighth affirmative defense, defendant alleges statute of frauds.

9. As a ninth affirmative defense, defendant alleges waiver.
10. As its tenth affirmative defense, defendant alleges comparative fault of a phantom party.
11. As its eleventh affirmative defense, defendant alleges failure to mitigate damages.
12. As its twelfth affirmative defense, defendant alleges mutual mistake.
13. As its thirteenth affirmative defense, defendant alleges patent misused.
14. As its fifteenth affirmative defense, defendant alleges that there is no copyright or in the alternative, that the copyright has expired, or in the alternative, that the copyright is not enforceable.

WHEREFORE, Defendant prays judgment as follows:

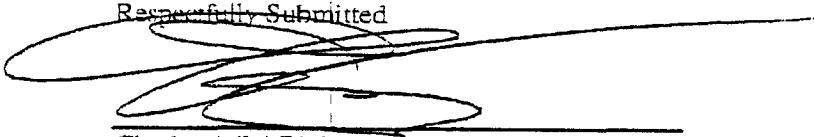
PRAYER

Defendant prays that:

1. Plaintiff take nothing by its complaint.
2. Plaintiff's complaint be dismissed with prejudice.
3. Defendant be awarded their reasonable attorney's fees and expenses.
4. Defendant be awarded pre-and post-judgment interest as allowed by law.
5. Defendant be awarded its costs of suit.
6. Defendant be granted any other further relief that the Court deems just and proper.

Dated: April 16, 2004

Respectfully Submitted



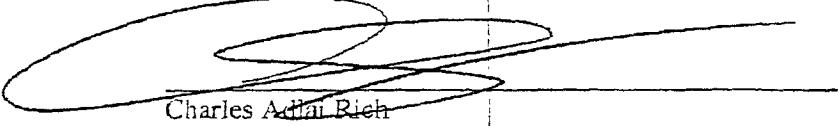
Charles Adlai Rich
Attorney at Law
Rich and Low, L.L.C.
4144 N. Central Expressway #515
Dallas, TX 75204
Ph: 214-651-8333
Fx: 214-651-8305
State Bar No. 24029795
Attorney for RF Video

Case 3:04-cv-00299-N Document 21 Filed 03/14/05 Page 23 of 25 PageID 204

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Federal Rules of Civil Procedure on April 16, 2004.

Grey Pierson
Pierson Behn Attorneys
301 W. Abrams Street
Arlington, Texas 76010


Charles Adair Rich
Attorney for Defendant

FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

AFFIDAVIT OF CHRIS McHAM

On this day, **CHRIS MCHAM** appeared before me, the undersigned notary public. After I administered an oath to him, upon his oath he stated:

1. My name is **CHRIS MCHAM**. I am over 18 years of age and fully competent to give the testimony in this affidavit. I have personal knowledge of all matters stated herein, and all statements set forth herein are true and correct.
2. I am licensed to practice law in the State of Texas. I have maintained an active law practice in Arlington, Texas, since 2003. I am knowledgeable about the cost of legal services in North Texas and I am familiar with the instant litigation.
3. The Law Firm of Pierson Behr Attorneys was engaged to represent Plaintiff **JAMES PAPA** in the instant action, and such firm has provided valuable services to Plaintiff in connection with same.
4. In my professional opinion:
 - (a) A reasonable fee for attorney services rendered for Plaintiff through the hearing of Plaintiff's Motion for Summary Judgment would be \$4,000.00.
 - (b) In the event of an appeal to the Court of Appeals, \$2,500.00 would be a reasonable fee for Plaintiff's attorney fees in connection with such appeal.
 - (c) In the event of the filing of a petition for discretionary review with the Texas Supreme Court, \$2,500.00 would be a reasonable fee for attorney fees in connection with same.

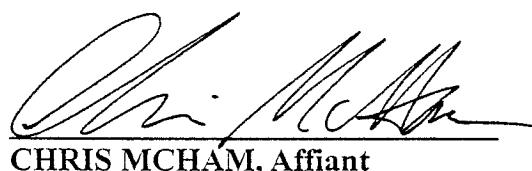
(d) In the event the Texas Supreme Court grants a petition for discretionary review, \$5,000.00 would be a reasonable fee for representing Plaintiff before such tribunal.

5. In evaluating the professional attorney services regarding my determination that such fees and costs were or will be reasonable and necessary, I considered, *inter alia*, the following factors:

- (a) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
- (b) the likelihood ... that the acceptance of the particular employment will preclude other employment by the lawyer;
- (c) the fee customarily charged in the locality for similar legal services;
- (d) the amount involved and the results obtained;
- (e) the time limitations imposed by the client or by the circumstances;
- (f) the nature and length of the professional relationship with the client;
- (g) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (h) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

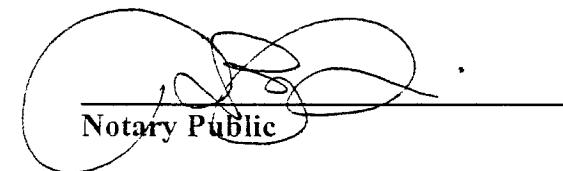
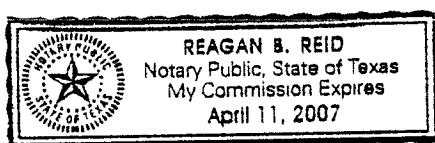
6. In my professional opinion, the attorney fees set forth above represent the reasonable and necessary costs of such professional services as rendered, or to be rendered, to Plaintiff in connection with this action, and I further assert that such services were, or will be, reasonably and necessarily incurred in conjunction with the prosecution of this lawsuit through the hearing on Plaintiff's Motion for Summary Judgment and any subsequent appeal.

7. Further affiant sayeth not.



CHRIS MCHAM, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by
CHRIS MCHAM on this the 1st day of August 2004.



Notary Public